Dr Chua Kaw Bing v Majlis Perubatan Malaysia

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1-25-130 OF 1995
NIK HASHIM JC
8 APRIL 1997

Professions *— Medical practitioners — Preliminary investigation committee inquiry — Medical Council directed the committee to proceed with the inquiry despite the complainant's absence — Whether the Medical Council's decision appealable under s 31(1) of Medical Act 1971 — Whether appeal was premature*

A complaint was made by one Yap Moi Chai ('the complainant') against the appellant Dr Chua Kaw Bing to the Malaysian Medical Council ('the council'). Pursuant to reg 26 of the Medical Regulations 1974 ('the Regulations'), a preliminary investigation committee ('the committee') was appointed to investigate the complaint. Two meetings were convened to inquire into the complaint and on both occasions, the complainant was absent. The council directed the committee to proceed with the inquiry despite the complainant's absence. Subsequently, a charge against the appellant was framed.

The appellant brought an appeal against the decision of the council. The appellant took objection to the framing of the charge and contended that a charge framed without the complainant attending the inquiry was in breach of the Regulations and as such, there had been no inquiry in accordance with the Medical Act 1971 ('the Act') and the Regulations. The council raised a preliminary objection arguing that the appeal was premature. It was further argued that the council had not made any decision as yet and by virtue of s 31(1) of the Act, the decision of the committee was not appealable.

Held, dismissing the appeal:

(1) The council's decision that the committee would continue with the inquiry based on the statutory declaration submitted by the complainant to the council was not the sort of order appealable under s 31(1) of the Act (see p 599E).

(2) Until the council exercised its disciplinary jurisdiction under ss 29 and 30 of the Act, the council could not be said to have assumed its disciplinary jurisdiction under the Act. Any decision, order or direction given by the council before it exercised its disciplinary jurisdiction was not an order appealable under the Act. In this case, the council had not made its order yet (see p 599G–H).

(3) The Act stipulates only for appeals against the orders of the council. 'Council' means the Malaysian Medical Council under s 3 of the Act, and it does not include the committee. Thus, the decision made by the committee to proceed with the inquiry against the appellant was not appealable (see p 599I).

(4) The appeal before the court was prematurely brought as the committee had not completed its investigation against the appellant and had not sent its records to the council for its action. Thus, the High Court had no jurisdiction to hear and determine the appeal (see p 600A–B); *Mohamed bin Musa v Deputy Public Prosecutor (No 2)* [1972] 1 MLJ 61 followed.

[Bahasa Malaysia summary

Aduan telah dibuat oleh seorang bernama Yap Moi Chai ('pengadu') terhadap perayu Dr Chua Kaw Bing kepada Majlis Perubatan Malaysia ('majlis tersebut'). Menurut peraturan 26 Peraturan-Peraturan Perubatan 1974 ('Peraturan tersebut'), jawatankuasa siasatan permulaan ('jawatankuasa tersebut') telah dilantik untuk menyiasat aduan. Dua mesyuarat telah diadakan untuk menyiasat aduan dan pada kedua-dua kali, pengadu tidak hadir. Majlis tersebut mengarahkan jawatankuasa tersebut supaya meneruskan siasatan meskipun pengadu tidak hadir. Berikutnya, suatu pertuduhan terhadap perayu telah dibuat.

Perayu membawa rayuan terhadap keputusan majlis tersebut. Perayu mmebantah trehadap pembuatan tuduhan dan menghujahkan bahawa suatu tuduhan yang dibuat tanpa pengadu menghadiri siasatan melanggar Peraturan tersebut dan oleh itu, tiada siasatan menurut Akta Perubatan 1971 ('Akta tersebut') dan Peraturan tersebut. Majlis tersebut membangkitkan bantahan permulaan dengan berhujah bahawa rayuan adalah pra-masa. Ia selanjutnya menghujahkan bahawa majlis tersebut belum lagi membuat sebarang keputusan dan disebabkan s 31(1) Akta tersebut, keputusan jawatankuasa tersebut tidak boleh dirayu.

Diputuskan, menolak rayuan:

(1) Keputusan majlis tersebut bahawa majlis jawatankuasa tersebut akan terus dengan siasatan berdasarkan perisytiharan statutori yang dikemukakan oleh pengadu kepada majlis tersebut bukanlah jenis perintah yang boleh dirayu di bawah s 31(1) Akta tersebut (lihat ms 599E).

(2) Sehingga majlis tersebut melaksanakan bidang kuasa disiplin di bawah ss 29 dan 30 Akta tersebut, majlis tersebut tidak boleh dikatakan telah mengambil alih bidang kuasa disiplin di bawah Akta tersebut. Sebarang keputusan, perintah atau arahan yang diberikan oleh majlis tersebut sebelum ia melaksanakan bidang kuasa disiplinnya bukanlah perintah yang boleh dirayu di bawah Akta tersebut. Dalam kes ini, majlis tersebut belum lagi membuat perintahnya (lihat ms 599G–H).

(3) Akta tersebut hanya membuat peruntukan bagi rayuan terhadap perintah-perintah majlis tersebut. 'Majlis' bermaksud Majlis Perubatan Malaysia di bawah s 3 Akta tersebut, dan ia tidak termasuk jawatankuasa tersebut. Justeru itu, keputusan yang

dibuat oleh jawatankuasa tersebut untuk meneruskan siasatan terhadap perayu tidak boleh dirayu (lihat ms 599I). A

(4) Rayuan di hadapan mahkamah telah dibawa pra-masa kerana jawatankuasa belum menyelesaikan siasatannya terhadap perayu dan belum menghantar rekod kepada majlis tersebut untuk tindakan. Justeru itu, Mahkamah Tinggi tidak mempunyai bidang kuasa untuk mendengar dan menentukan rayuan (lihat ms 600A–B); *Mohamed bin Musa v Deputy Public Prosecutor (No 2)* [1972] 1 MLJ 61 diikut.] B

Notes

For cases on medical practitioners, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1321–1342. C

Case referred to

Mohamed bin Musa v Deputy Public Prosecutor (No 2) [1972] 1 MLJ 61 (folld) D

Legislation referred to

Medical Act 1971 ss 3, 29, 30, 31(1)
Medical Regulations 1974 regs 26, 30, 31
Rules of the High Court 1980 O 55 r 13 E

MS Dhillon and *Chew Eng Ghee* (*PS Ranjan & Co*) for the appellant.
Stefeny David (*Aziz & Mazlan*) for the respondent.

Cur Adv Vult F

Nik Hashim JC: This is an appeal by way of originating motion pursuant to O 55 r 13 of the Rules of the High Court 1980. Briefly, the facts are as follows. In January 1994, a series of articles appeared in a local newspaper which eventually led to a complaint made by one Yap Moi Chai ('the complainant') against the appellant Dr Chua Kaw Bing to the Malaysian Medical Council ('the council'). The complaint, in the form of a statutory declaration, was that the appellant had refused urgent treatment to the complainant's 13-day old granddaughter who was down with high fever. G

Pursuant to reg 26 of the Medical Regulations 1974 ('the Regulations') a preliminary investigation committee ('the committee') was appointed to investigate the complaint. The committee convened its meetings on 28 March and 26 August 1994 to inquire into the complaint of the complainant. But she was absent on both occasions whereas the appellant was present. The charge against the appellant was framed despite the complainant's absence from the inquiry. The appellant took objection to the framing of the charge and contended that a charge framed without the complainant attending the inquiry was in breach of the Regulations and as such, there had been no inquiry in accordance with the Medical Act 1971 ('the Act') and the Regulations. Hence this appeal to the High Court. H I

A At the outset of the hearing of the appeal, Cik Stefeny David raised a preliminary objection. She submitted that the appeal was premature. The council had not made any decision as yet and by virtue of s 31(1) of the Act, the decision of the committee was not appealable. Encik MS Dhillon assisted by En Chew Eng Ghee for the appellant, on the other hand, argued that the appeal was against the decision of the council which had directed the committee to proceed with the inquiry against the appellant, and the appellant was such a person who was aggrieved by the order.

Section 31(1) of the Act states:

> Any person *who is aggrieved by any order made in respect of him by the Council in the exercise of its disciplinary jurisdiction may appeal to the High Court*, and the High Court may thereupon affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper; the cost of the appeal shall be in the discretion of the High Court. (Emphasis added.)

The issue before the court is whether the decision to proceed with the inquiry is an order appealable under s 31(1) of the Act.

Having regard to the notes of the inquiry before the committee, it is my considered view that the council's decision that the committee could continue with the inquiry based on the statutory declaration submitted by the complainant to the council is not the sort of order which is appealable under s 31(1) of the Act. The law does not prohibit the committee from seeking advice from the council; neither is the council prevented from tendering advice to the committee in respect of this inquiry. The function of the committee is clear under reg 26(1), that is to make a preliminary investigation into complaints or information touching any disciplinary matter against a practitioner. Since the committee had already framed the charge, the committee should be allowed to proceed with its inquiry to its conclusion without interruption. Any flaws in the inquiry before the committee as contended by the appellant can be taken as a ground of appeal later once the council receives the records from the committee (see reg 30) and the council gives its decision. Until the council exercises its disciplinary jurisdiction under ss 29 and 30 of the Act, the council cannot be said to have assumed its disciplinary jurisdiction under the Act. Any decision, order or direction given by the council before it exercises its disciplinary jurisdiction is not an order which is appealable under s 31(1) of the Act. In this case, the council has not made its order as yet. Until it actually makes an order in the course of its own inquiry under reg 31, the appellant has to wait. Therefore, the council's decision that the committee could proceed with the inquiry is not appealable. Indeed, there is nothing in the Act or the Regulations which provides for an appeal against the order made by the committee. The Act stipulates only for appeals against the orders of the council. 'Council' means the Malaysian Medical Council under s 3 of the Act, and it does not include the committee. Thus, the decision made by the committee to proceed with the inquiry against the appellant is not appealable.

The appeal before the court is prematurely brought, as the committee has not completed its investigation against the appellant and has not sent its records to the council for its action. That being so, I rule that the High Court has no jurisdiction to hear and determine this appeal (see *Mohamed bin Musa v Deputy Public Prosecutor (No 2)* [1972] 1 MLJ 61 (FC)). In the result, I uphold the objection of the respondent and order that the committee continue its inquiry to its conclusion as required by the Act and the Regulations. The appeal is therefore struck off with costs.

Appeal struck off with cost.

Reported by Janice Ng